

PATENT
88622

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant: Robert Beckstrom, et al. Confirmation No. 5983
Serial No.: 10/675,371 Art Unit: 2161
Filed: 9/30/2003 Examiner: Daye, Chelcie L.
For: DATA SESSION
NOTIFICATION MEANS
AND METHOD
Docket No.: 6065-88622

APPELLANTS' REPLY BRIEF ON APPEAL UNDER 37 C.F.R. §41.41

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir/Madam:

In response to the Examiners Answer mailed September 1, 2010, Applicant requests consideration of the following reply.

There are no new authorities cited and no new facts relied upon.

Should there be any deficiency in fees in connection with this Appeal, the Commissioner is respectfully requested to and is hereby authorized to charge any such deficiency in fees to Deposit Account No. 23-0920.

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I. ARGUMENT

A. NONE OF THE CITED REFERENCES DISCLOSE
AUTOMATICALLY CONFERENCING OR DOING SO IN RESPONSE
TO AUTOMATIC MONITORING

The Examiner's Answer argues that Shaffer discloses automatically conferencing while Federov is merely relied upon for disclosure of conferencing (Examiner's Answer, p.6, lines 5-8; p. 17, lines 2-4). However, the claims call for automatically conferencing in response to the monitoring of the ongoing transaction not merely automatic conferencing. First, Federov merely describes direct monitoring by a supervisor who has already been conferenced. Therefore, even if Shaffer disclosed automatic conferencing/engaging in response to the monitoring, it could not be properly added to Federov to get the claimed invention. However, Shaffer simply does not disclose automatic conferencing in response to the monitoring. This is fully discussed in the Appeal Brief (p. 9, line 18-p. 12, line 2). The Examiner's Answer fails to identify any passage of Shaffer which describes automatically conferencing. Shaffer only notifies a supervisor but does not automatically engage the supervisor. This notification is clearly not conferencing/engagement and in fact teaches away from the automatic conferencing/engagement claimed. The claimed automatic engagement in response to automatic monitoring is simply not disclosed in any of the cited references, and Shaffer's notification requiring the supervisor to manually elect to engage teaches away from this claim feature. Thus, all the claims are distinguishable over any combination of the references, none of which disclose this feature.

B. MILOSLAVSKY DOES NOT DISCLOSE AUTOMATIC INSPECTION
OF CONTENT OF THE DATE/TEXT MESSAGES

The Examiner's Answer argues that Miloslavsky teaches routing emails to a qualified support person and therefore must perform an inspection of content as claimed in claim 10. However, no such inspection is disclosed. This is merely an assumption which is not accurate. Such routing to the qualified person can be done for example based on the called number/address, or the calling number/address, etc. There is no teaching in Miloslavsky of automatic inspection of the content of a message or of detection of problematic phrases to engage the third party as claimed in claim 10.

C. ELAZAR DOES NOT DISCLOSE DETECTING A KEYWORD INDICATING THE CUSTOMER DESIRE TO DEAL WITH A SUPERVISOR

The Examiner's Answer asserts that Elazar teaches detecting a keyword such as "supervisor" indicating desire to deal with a supervisor on Col. 11, lines 1-6. However, this passage describes detecting one of a list of words which require recording of the telephone call, thus teaching away from the claimed automatic engaging in response to the key work detection. None of the other cited passages in Elazar mention or suggests using keywords to automatically engage the supervisor as claimed in claim 13. Thus Elazar, and the other cited references fail to disclose this feature and claim 13 is therefore distinguishable over any combination of the references.

D. BECK DOES NOT DISCLOSE THE THIRD PARTY AUTOMATICALLY ENGAGED IN RESPONSE TO AUTOMATIC MONITORING TO REVIEW TEXT MESSAGES BEFORE THEY ARE SENT

The Examiner's Answer asserts that Beck, at Col. 41, lines 36-41 describes an auditor reviewing the transaction to ensure nothing was missed and argues this is the claimed third party reviewing emails before being sent as claimed in claim 3. However, this passage merely describes an audit review of a transaction, conducted using interactive icons "for calling up primary recorded dialog" (i.e. an audit of recorded transactions). This does not disclose the claimed review of e-mails before they are sent as in claim 3 but rather a subsequent audit of recorded transactions. Thus, the cited references do not disclose this claimed feature and therefore claim 3 is distinguishable over the combination.

E. SHAFFER DOES NOT DISCLOSE MEASURED CHANGE BASED UPON DEVIATION FROM A PRECEDING TIME PERIOD

The Examiner's Answer asserts that Shaffer at Col 4, lines 44-63 and Col. 7-8, lines 66-67 and 1-5 disclose the claimed measured changes in stress levels based on deviation from a preceding period of claim 8. However, these passages of Shaffer describe comparison to a predetermined threshold. The comparison to a predetermined level does not constitute the claimed deviation from the preceding time. The detected voice patterns in Shaffer at Col. 4 are simply compared to predetermined level, there is no determination of a deviation from a preceding time. The description in Col. 7-8 merely describes direct supervisor monitoring after the supervisor elects to monitor a session and has nothing to do with the claimed features. Thus this feature is not disclosed by Shaffer or the other references.

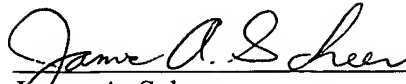
F. EILBACHER DOES NOT DISCLOSE VIDEO MONITORING TO ASSIST IN DETERMINING STRESS LEVELS.

The Examiner's Answer asserts that Eilbacher discloses monitoring video of the parties to assist in determining stress as claimed in claim 12. However, the Examiner's Answer points out that Eilbacher describes communications indicating various media including video, and that Eilbacher teaches audio stress analysis, and examples of other media it can be used with, those being email, fax and VOIP in Col. 11, lines 26-61. However, the Examiner's Answer does not cite any disclosure of using video. The fact that video communications are described in Eilbacher but is excluded from use with stress analysis and fail teaches away from the claimed use of video to assist in stress determination as in claim 12. Thus, claim 12 is distinguishable over the cited combination.

Accordingly, all pending claims are distinguishable over the cited references because none of the references disclose the claimed automatic conferencing/engaging in response to automatic monitoring as well as other features discussed alone.

For the above reasons, any combination of the cited references does not teach or suggest each and every claim limitation of the pending claims. Since the combination fails to teach or suggest each and every claim limitation, the claims are distinguishable over the combination. Applicant has discussed other distinctions and arguments in Appellant's Appeal Brief and continue to assert these distinctions and arguments as well. Therefore, allowance of claims 1-20 as now presented is believed to be in order. Appellant respectfully request that the Board reverse the decision of the Examiner with regard to all pending claims.

Respectfully submitted

A handwritten signature in cursive script, reading "James A. Scheer", written over a horizontal line.

James A. Scheer
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Dated: November 1, 2010

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